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FOR APPENDIX

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APPENDIX A
UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

FILED
United States Court of Appeals
Tenth Circuit
May 27, 2004
PATRICK FISHER
Clerk

DONALD E. ARMSTRONG, Appellant, v. ROGER G. SEGAL, as Trustee of the Mountain Pacific Ventures, Inc.; STEPPES APARTMENTS, LTD. Appellees.	No. 03-4005 (D.C. No. 2:02-CV-567-BSJ) (D. Utah)

ORDER AND JUDGMENT*

Before **McCONNELL, ANDERSON**, and **BALDOCK,** Circuit Judges.

After examining the briefs and appellate record,

* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34,1(G). The case is therefore ordered submitted without oral argument.

Appellant Donald E. Armstrong owned and controlled debtor Mountain Pacific Ventures, Inc. (MPV), which voluntarily filed a chapter 11 bankruptcy petition. Appellee Roger G. Segal (trustee) was eventually appointed trustee of the MPV estate. On December 19, 2001, the bankruptcy court issued a confirmation order approving the trustee's proposed reorganization plan for MPV. Armstrong, as an unsecured creditor of MPV, appealed the confirmation order to the district court but did not seek a stay of the order pending appeal. During the pendency of the appeal in the district court, the plan was substantially consummated and all unsecured creditors, including Armstrong, were paid in full with interest.

On December 12, 2002, the district court held that the appeal was moot and, alternatively, that the bankruptcy court had committed no reversible error of law or fact. Armstrong appeals that order to this court.

Our jurisdiction arises under 28 U.S.C. § 158(d) and, after reviewing the order of the district court, the applicable law and the submissions of the parties, we affirm. A later and unrelated holding of the BAP regarding the bankruptcy court's jurisdiction to enter criminal sanctions against Armstrong has no bearing on this appeal.

Armstrong's motion to file a supplemental

appendix is GRANTED. The judgment of the district court is AFFIRMED.

Entered for the Court

Bobby R. Baldock
Circuit Judge

APPENDIX B

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

FILED
12 DEC 02 PM 2:52
DISTRICT OF UTAH
BY: DEPUTY CLERK

DONALD E. ARMSTRONG Appellant, v. ROGER G. SEGAL, Trustee of Mountain Pacific Ventures, Inc. Bankruptcy Case 99-22588, Respondent.	Case No. 2:02-cv-00567 Judge: Bruce S. Jenkins

ORDER

The appeal filed in the above-referenced matter came on regularly for hearing before the Honorable Bruce S. Jenkins, United States District Court Judge, on

September 16, 2002. The appellant, Donald E. Armstrong, (the "Appellant"), appeared *pro se*. Julie A. Bryan appeared on behalf of Roger G. Segal, Trustee of the bankruptcy estate of Mountain Pacific Ventures, appellee ("Respondent"). Steppes Apartments Ltd. appeared through counsel, Jeff Shields. The Court, having reviewed the briefs on file, the law cited therein and having heard arguments presented, issues the following Findings, Conclusions and Order:

1. The "Trustee's Amended Plan of Reorganization dated December 19, 2002" (the "Confirmed Plan") was confirmed by the Findings of Fact, Conclusions of Law, and Order entered May 13, 2002 (the "Confirmation Order");

2. The Appellant did not seek stay of the Confirmation Order or post a bond on appeal but requested an extension of time for filing the Appellant's brief, which was granted by the Court.

3. Pursuant to the duties of the Respondent under the Confirmation Order, Respondent proceeded to consummate the Confirmed Plan.

4. The Confirmed Plan has been substantially consummated.

5. At this stage it is neither reasonable, equitable, nor possible to unravel what has been accomplished under the terms of the Confirmed Plan.

6. The instant appeal has been rendered moot.

7. Additionally, the Court has reviewed the Confirmation Order and the record on appeal and finds no reversible error of law or fact.

Based upon the foregoing findings and conclusions and as otherwise set forth in the record,

IT IS HEREBY ORDERED that the instant appeal is

dismissed as moot and that the Confirmation Order is affirmed.

DATED this 12 day of Dec 2002.

/s/
Bruce S. Jenkins
United States District Judge

APPENDIX C

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

ENTERED
UNITED STATES
BANKRUPTCY COURT
DISTRICT OF UTAH
APR 15, 2002 3:48PM
WILLIAM C. STILLGEBAUER
CLERK OF COURT
BY: DEPUTY CLERK

In re:
MOUNTAIN PACIFIC VENTURES, INC., Debtor(s).

Bankruptcy No, 99C-22588
(Chapter 11)

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER CONFIRMING AND APPROVING TRUSTEE'S AMENDED PLAN OF REORGANIZATION DATED DECEMBER 19, 2001

The Trustee's Amended Plan of Reorganization Dated

December 19, 2001 (the "Plan") filed under Chapter 11 of the Bankruptcy Code, I1 U.S.C. § 101, et seq., was tiled by Roger A. Segal, Chapter 11 Trustee (the "Trustee") of the bankruptcy estate of Mountain Pacific Ventures, Inc. ("MPV "). Following the Court's approval of the Disclosure Statement for the Trustee's Amended Plan of Reorganization Dated December 19, 2001 (the "Disclosure Statement") by Order entered February 6, 2002, the Disclosure Statement, Plan, Notice of Hearing and, where appropriate, a Ballot, were transmitted to creditors and parties-in-interest. A hearing was held on March 11, 2002 to consider confirmation of the Plan, Appearances were made at the hearing as noted on the record.

One objection to confirmation of the Plan was timely filed by Donald E. Armstrong ("Armstrong").

The Court has reviewed and considered the Plan and Armstrong's objection to confirmation of the Plan. The Court also reviewed documentary and oral evidence presented and proffered and the argument of counsel. Accordingly, the Court finds and concludes as follows:

A. Jurisdiction. Confirmation of the Plan is a core proceeding under 28 U.S.C. § 157. This Court has jurisdiction with respect to these proceedings under 28 U.S.C. § 1334.

B. Notice. Notice to parties-in-interest of the time fixed for filing objections and of the hearing to consider confirmation of the Plan has been given and is sufficient pursuant to applicable law under, among other provisions, Sections 1126, 1128 and 1129 of the Bankruptcy Code and Fed. R. Bankr, P. 2002, 3017, 3018 and 3019. The solicitation package with respect to the Plan (which included the Plan, Disclosure Statement, a Notice Regarding Objection and Voting Deadlines, a Notice of Hearing on Confirmation of the Plan and, where applicable, a ballot) was properly served on all necessary parties. The Trustee has satisfied his obligations with respect to service of these

documents on parties-in-interest.

C. Acceptance. The balloting process on the Plan as conducted by the Trustee has been proper; and the Plan has been accepted in writing by the creditors whose acceptance is required by law.

D. Armstrong's Objection. The Armstrong Objection has been considered by the Court. The Court finds that it is reasonable and proper to amend the Plan to provide that the collateral securing Transwest Credit Union's claim (a 1993 Suzuki Sidekick) shall either be retained, in full satisfaction of the claim of Transwest Credit Union or surrendered to the Trustee within 60 days of the entry of this Order. In the event the collateral is turned over to the Trustee, the Trustee shall sell the collateral and turn the proceeds over to holder of the claim of Transwest Credit Union. In the event a deficiency exists in the amount necessary to satisfy the obligation owed, Transwest Credit Union, Transwest Credit Union or its assignee may file a proof of claim asserting an unsecured claim in the amount of the deficiency. The Trustee shall have 30 days thereafter to object to the claim. Any allowed unsecured claim shall be paid on par with other allowed unsecured claims under class 3 of the Plan. With said modification of the Plan, the Court finds the claim of Transwest Credit Union is unimpaired. Any and all objections raised by Armstrong to confirmation of the Plan are overruled.

E. Plan Conditions to Confirmation. All conditions to Confirmation set forth in the Plan have been satisfied or effectively waived.

F. Section 1129(a)(1). The Plan complies with the applicable provisions of the Bankruptcy Code, including without limitation the provisions of the Bankruptcy Code respecting classification of claims and the requirements of Section 1123 of the Bankruptcy Code.

G. Section 1129(a)(2). The Trustee has complied with the applicable provisions of the Bankruptcy

Code.

H. Section 1129(a)(3). The Plan has been proposed in good faith and not by any means forbidden by law.

I. Section 1129(a)(4). All trustee compensation and professional compensation and reimbursement of expenses for services and costs in or in connection with the case and in connection with the Plan and incident to the case has been approved or are subject to the approval of the Court as reasonable.

J. Section 1129(a)(5). The identify, qualifications, and affiliations of the person to be Plan Trustee after confirmation have been disclosed. The appointment of Roger G. Segal, or his assignee, as Disbursing Agent is equitable, consistent with the interests of creditors and the Debtor, and with public policy. The nature of the compensation to be paid has been fully disclosed. Mountain Pacific Ventures, Inc. shall be and hereby is a Reorganized Debtor. Kenneth A. Rushton, as trustee of the bankruptcy estate of Donald E. Armstrong, by virtue of this Order and the Plan, is hereby appointed as the sole interest holder and sole director of the Reorganized Debtor. Kenneth A. Rushton, as trustee of the bankruptcy estate of Donald E. Armstrong, shall have the sole right to manage or appoint managers as necessary for the day to day operations of the Reorganized Debtor and/or to effect a dissolution of the Reorganized Debtor as contemplated by the Plan, All other interests, rights, shares, options or any claim to any interest in the Reorganized Debtor are hereby cancelled and of no effect. As contemplated under the Plan and to the degree deemed advisable by the Trustee and/or by Kenneth A. Rushton, as trustee of the bankruptcy estate of Donald E. Armstrong, public records may be filed to reflect Kenneth A. Rushton, as trustee of the bankruptcy estate of Donald E. Armstrong, as the sole shareholder and director of the Reorganized Debtor,

K. Section 1129(a)(6). The Plan does not propose any changes of rates under the jurisdiction of any regulatory body and this section is therefore not applicable in this case.

L. Section 1129(4)(7). Each holder of a Claim or equity interest has accepted the Plan or will receive or retain under the Plan property of value, as of the effective date of the Plan, that is not less than the amount that such holder would receive or retain if the Debtor were liquidated under Chapter 7 of the Bankruptcy Code on such date,

M. Section 1129(a)(8). The Court finds that Classes 1, 2A, 3 and 6 are not impaired and that Class 2B, as treatment of that class is modified under the instant Order, is not impaired. A Ballot Register was submitted at the time of hearing on confirmation *and shows* that the impaired Class 4 claim of Kenneth A. Rushton, Trustee of the Bankruptcy Estate of Donald E, Armstrong, has accepted the Plan. The general unsecured Class 3 has likewise voted to accept the Plan in that creditors who hold at least two-thirds in amount and more than one-half in number of claims in such class have voted to accept the Plan. Classes 1 and 2A are deemed to have accepted the Plan because no one in those classes voted on the Plan or objected to the Plan. Classes 5 and 6 voted to accept the Plan.

N. Section 1129(a)(9). Except to the extent that a holder of a particular claim has agreed to a different treatment of such claim, the Plan satisfies the requirements of Section 1129(a)(9) with respect to the payment of claims having priority under Section 507 of the Bankruptcy Code.

O. Section 1129(a)(10). Class 4 is an impaired class that has voted and accepted the Plan, determined without including any acceptance of the Plan by any insider.

P. Section 1129(a)(11). Confirmation of the Plan is not likely to be followed by the further liquidation or the need for further financial reorganization of the Debtor except

as provided in the Plan.

Q. *Section* 112.9(a)(12). All fees under 28 U.S.C. § 1930 have been or will be paid on the effective date of the Plan.

R. Section 1129(a)(13). Section 1129(a)(14) is inapplicable in this case.

S. Section 1129(b).

(1) Alternative Cramdown Findings with Respect to Class 2B. The Court has found that, as the Plan is amended by this Order, Class 2B is unimpaired and deemed to have accepted the Plan. Alternatively, the requirements of Section 1129(b) of the Bankruptcy Code have been met with respect to Class 2B under the Plan, as amended by this Order, because the Plan, as amended by this Order, does not discriminate unfairly and is fair and equitable with respect to said class, in that the Plan, as amended by this Order, provides for the sale or abandomnent of the property securing such claim with the holder of such claim receiving thereby either the property securing such claim or the proceeds of such sale to the extent of the allowed amount of such claim.

(2) Alternative Cramdown Findings with Respect to Class 3. The Court has found that Class 3 is an accepting class of claims and is unimpaired. Alternatively, the requirements of Section 1129(b) of the Bankruptcy Code have been met with respect to Class 3 under the Plan because the Plan does not discriminate unfairly, and is fair and equitable, with respect to Class 3.

(3) Litigation Injunction. The Plan provides for a "Litigation Injunction," more fully described as a permanent injunction enjoining Armstrong related entities from commencing or continuing litigation against the Steppes Parties (as defined in the Plan and the Settlement Agreement attached as Exhibit "B" to the Plan (the "Settlement Agreement")), Roger Segal, Kenneth A. Rushton, and any of those parties' principals, professionals,

agents, and assigns, based upon specific causes of action set forth herein. The Litigation Injunction further provides, among other things, that Armstrong must apply to this Court for authority to commence or continue any litigation against these parties. The Court finds that the Litigation Injunction is consistent with the Bankruptcy Code and the law established thereunder and is necessary to protect the integrity of the Estate. *In re Energy Co-op,* 886 F.2d 921 (7th Cir. 1989). It having been determined, after hearing on notice, that the Plan satisfies the requirements for confirmation set forth in 11 U.S.C. § 1129(a) and (b), and based on findings of fact and conclusions of law announced on the record and the foregoing findings of fact and conclusions of law, IT IS ORDERED that:

1. Modification of the Plan.. The Plan was modified to provide the following treatment for the claim of Transwest Credit Union: the Court finds that it is reasonable and proper to amend the Plan to provide that the collateral securing Transwest Credit Union's claim (a 1993 Suzuki Sidekick) shall either be retained by the holder of the claim, in full satisfaction of the claim of Transwest Credit Union, or surrendered to the Trustee within 60 days of the entry of this Order. In the event the collateral is turned over to the Trustee, the Trustee shall sell the collateral and turn the proceeds over to holder of the claim of Transwest Credit Union. In the event a deficiency exists in the amount necessary to satisfy the obligation owed, Transwest Credit Union or its assignee may file a proof of claim asserting an unsecured claim in the amount of the deficiency. The Trustee shall have 30 days thereafter to object to the claim. Any allowed unsecured claim shall be paid on par with other allowed unsecured claims under class 3 of the Plan. With said modification of the Plan, the Court finds the claim of Transwest Credit Union is unimpaired.

2. Confirmation of the Plan. The Plan, as modified by this Order, is confirmed and the Settlement

Agreement by and between the Trustee, Kenneth A. Rushton, as Trustee of the bankruptcy of Donald A. Armstrong, and Steppes Apartments Limited, which is attached as Exhibit "B" to the Plan and incorporated into the Plan (the "Settlement Agreement") is approved. A copy of the Plan is attached to this order as Exhibit "A".

3. Objections Overruled. Armstrong's Objection to confirmation of the Plan is overruled,

4. Implementation of the Plan. The Trustee is hereby authorized to take all steps and execute any and all documents necessary or appropriate to implement the Plan and the Settlement Agreement incorporated into the Plan.

5. Discharge of the Debtor. Except as otherwise provided in the Plan and in the Bankruptcy Code, effective on the Effective Date, to the extent permissible under Section 1141 of the Bankruptcy Code, the Debtor is discharged of all prepetition debts, claims against, liens on, and interests in the Debtor, its assets, or properties, which debts, claims, liens, and interests arose at any time before the filing of this Case.

6. Release of the Estate. Except as otherwise expressly provided in the Plan, on the Effective Date of the Plan, all Persons who have held, hold, or may hold claims, in consideration for the obligations of the Estate under the Plan, will be deemed to have forever waived, released, and discharged all rights or claims, whether based upon tort, fraud, contract, or otherwise, which they heretofore, now, or hereafter possess or may possess against the Estate existing prior to the Effective Date, except as set forth in the Plan.

7. Injunctions.

A. Permanent Injunction. Except as otherwise expressly provided in the Plan, all persons who have held, hold or may hold claims against the Debtor or interests in the Debtor are permanently enjoined from: a) commencing or continuing in any manner any action or other proceeding of any kind with respect to any such claim or interest against

the Debtor, the Debtor's bankruptcy estate, the Reorganized Debtor, the Trustee, the Trustee's professionals, affiliates, subsidiaries, or any of their respective officers, directors, employees with respect to any such claim or interest; b) the enforcement, attachment, collection or recovery by any manner or means of any judgment, award, decree, or order against the bankruptcy estate of the Debtor, the Debtor, the Reorganized Debtor, the Trustee, the Trustee's professionals, affiliates, subsidiaries, or any of their respective officers, directors, employees with respect to any such claim or interest; c) creating, perfecting or enforcing any encumbrance of any kind against the Debtor's bankruptcy estate, the Debtor, the Reorganized Debtor, the Trustee, the Trustee's professionals, affiliates, subsidiaries, or any of their respective officers, directors, employees or against the property of the Debtor, the Debtor's bankruptcy estate, the Reorganized Debtor, the Trustee, the Trustee's professionals, affiliates, subsidiaries, or any of their respective officers, directors, employees with respect to any such claim or interest; d) asserting any setoff, right of subrogation, or recoupment of any kind against any obligation due the Debtor, the Debtor's bankruptcy estate, the Reorganized Debtor, the Trustee, the Trustee's professionals, affiliates, subsidiaries, or any of their respective officers, directors, employees or against the property of the Debtor, the Debtor's bankruptcy estate, the Reorganized Debtor, the Trustee, the Trustee's professionals, affiliates, subsidiaries, or any of their respective officers, directors, employees with respect to any such claim or interest; and e) any act, in any manner, in any place whatsoever, that does not conform to, or comply with, the provisions of the Plan; provided, however, that such permanent injunction shall not impair the rights of the Reorganized Debtor to prosecute any Debtor Action, as that term is defined under the Plan.

B. Litigation Injunction. Armstrong, the Donald E. Armstrong Family Trust, the Donald E.

Armstrong Charitable Remainder Unitrust, and any other entity related to Armstrong and controlled by him in whole or in part, now or in the future, and any other entity over which Armstrong asserts actual control in whole or in part, now and in the future, their agents, attorneys and those acting in concert with them, are hereby permanently enjoined from commencing or continuing any litigation against Steepes Apartments, Ltd. ("Steppes"), John Feece, Rosalie Feece, Baxter Holdings, Inc., Jeffrey L. Shields, Zachary T. Shields, Callister Nebeker & McCullough, Robert Bodoin, Hill Gilstrap, Frank Hill, Frank Gilstrap, Sal Espino, Chris Harris, Ben Levinson, Victor Vilaplana, Dennis Wickham, Elizabeth Smith, and Seltzer Caplin McMahon Vitek, and any and all other attorneys of Steppes and their law firms and all employees of such firms, Roger G. Segal as trustee in *In re Mountain Pacific Ventures, Inc.,* Bankr. Case No. 99-22588, Kenneth A. Rushton, ("Rushton")Trustee *in in re Donald E. Armstrong,* Bankr. Case No. 00-26592, and those parties' principals, professionals, agents, and assigns based upon (1) claims or causes of action released pursuant to the terms of the Plan and the Settlement Agreement, and (2) claims or causes of action based upon action taken by the Trustees, the Steppes Parties (all as defined in the Settlement Agreement) and any of those parties' principals, professionals, agents, and assigns in effectuating the Settlement Agreement and the Plan. *See also* Fed. R. Bankr. P. 3016(c)(2002).

Armstrong must apply to this Court for authority to commence litigation against any of these parties or their principals, professionals, agents, or assigns, must show that the proposed litigation does not violate the terms of this Plan, and must provide reasonable notice and opportunity to respond to the party against whom Armstrong wishes to proceed. The Court will grant such authority only upon a finding that such litigation does not violate the terms of this Plan, and this Litigation Injunction. If Armstrong applies to

the Court to pursue such litigation and his application is denied, then the party or parties responding to the application shall be awarded reimbursement of attorneys' fees and costs reasonably incurred in connection with the application, which the Court, in its discretion, may assess against Armstrong and/or which may be paid from funds remaining in the estate or from the Armstrong Estate under Paragraph 1.9 of the Settlement Agreement,

8. Revesting of Property. in the event Armstrong violates the permanent injunction set forth in the Plan by commencing or continuing litigation against Steppes, Segal, Rushton or any of those parties, principals, professionals, agents and assigns (including but not limited to those persons listed in paragraph I. C. of the Settlement Agreement) without bankruptcy court authority, and Segal receives reliable information to conclude that a violation of the permanent injunction may have occurred, Segal shall take reasonable actions to seek enforcement of the permanent injunction in the bankruptcy court and the cost of such enforcement, including necessary fees incurred by professionals, shall be considered a cost of administration of the Plan of Reorganization payable from funds remaining in the estate upon application to, and allowance by, the bankruptcy court and/or allowable for payment from the Armstrong Estate under paragraph I.G. of the Settlement Agreement. Except as otherwise expressly provided in the Plan (e.g. Distribution Fund, Disputed Claim Reserves, Post Effective Date Expense Fund) on the effective date of the Plan, the Reorganized Debtor will be vested with all of the assets and property of the Debtor's bankruptcy estate, free and clear of all claims, liens, encumbrances, charges, and other interests of claimants or interest holders, and may operate its business free of any restrictions imposed by the Bankruptcy Code or by the Bankruptcy Court. Such assets and property of the Debtor's bankruptcy estate include any and all rights of the Debtor or the Trustee which were

granted by various persons in settlement agreements which were approved by the Bankruptcy Court, such settlements having resolved litigation (or threatened litigation) initiated by the Trustee on behalf of the Debtor's bankruptcy estate, including but not limited to settlements reached in that certain litigation entitled Union Bank of California, N.A., Executor for the Estate of Adele Wolovnik, v. Donald F. Armstrong Et al, Case No. 727607, commenced in the Superior Court of the State of California, County of San Diego.

9. Debtor Actions Assigned. The Debtor Actions, as that term is defined under the Plan, shall be deemed vested in the Reorganized Debtor as a "representative of the estate appointed by this Court for such purposes under 11 U.S.C. § 1123(b)(3)(B) as of the effective date of the Plan. Mountain Pacific Ventures, Inc., the Reorganized Debtor shall be, and hereby is substituted as Plaintiff in the adversary proceeding entitled *Segal v. Steppes Apartments, Ltd.* Adversary Proceeding No. 99-2218. In accord with the Settlement Agreement and the Plan, *Segal v. Steppes Apartments, Ltd.* Adversary Proceeding No. 99-2218 is hereby distributed to the Reorganized Debtor of which Kenneth A. Rushton is sole interest holder and director and absent Order of this *Court,* no other party shall be deemed to have any rights as party plaintiff or plaintiff through intervention in such action. As contemplated by the approved Settlement Agreement, this Order and governing documents of the Reorganized Debtor, the Reorganized Debtor, controlled by Kenneth A. Rushton as sole shareholder and director, shall have the sole right to dismiss *Segal v. Steppes Apartments, Ltd.* Adversary Proceeding No. 99-2218.

10. Retention of Jurisdiction. The Court shall retain exclusive jurisdiction of this case for the purposes set forth in the Plan, including without limitation, to adjudicate all controversies concerning the classification or allowance

of claims, to make such Orders as are necessary or appropriate to aid the consummation of the Plan and to ensure the implementation of the provisions of the Plan and this Order in the manner provided under Section 1142 of the Code and Fed. R. Bankr. P 3020(d).

11. Plan and Order Binding. The provisions of the Plan and this Order are hereby made binding upon the Trustee, the Debtor, and any and all holders of claims against or interest in the Debtor, whether or not such claim or interest is impaired under the Plan, and whether or not such holder of a claim has accepted or rejected the Plan.

12. No Release of Regulatory Obligations. Nothing in this Confirmation Order or the Plan releases any entity from any liability to the United States or the State of Utah under any police or regulatory statute enforceable by the United States or the State of Utah, as the owner or operator of property after the Effective Date, nor shall anything in the Confirmation Order or Plan discharge any claim of the United States or the State of Utah under environmental statutes that arises after confirmation of the Plan.

13. Trustee to Give Notice of Entry of Confirmation Order. The Trustee shall give to all creditors and parties in interest notice by mail of the entry of this Order in accordance with Fed. R, Bankr, P. 2002(0(7) and shall file a certificate evidencing such service.

Dated this 1 day of May 2002.

BY THE COURT:

/s/

GLEN E. CLARK
UNITED STATES BANKRUPTCY JUDGE

APPENDIX D

1. U.S.C.A. Const. Amend. I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

2. U.S.C.A. Const. Amend. V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

3. U.S.C.A. Const. Amend. VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

4. U.S.C.A. Const. Amend. XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or

property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

5. 11 U.S.C.A. § 704

§ 704. Duties of trustee

The trustee shall--

(2) be accountable for all property received;
(5) if a purpose would be served, examine proofs of claims and object to the allowance of any claim that is improper;
(7) unless the court orders otherwise, furnish such information concerning the estate and the estate's administration as is requested by a party in interest;
(8) if the business of the debtor is authorized to be operated, file with the court, with the United States trustee, and with any governmental unit charged with responsibility for collection or determination of any tax arising out of such operation, periodic reports and summaries of the operation of such business, including a statement of receipts and disbursements, and such other information as the United States trustee or the court requires; and
(9) make a final report and file a final account of the administration of the estate with the court and with the United States trustee.

6. § 1106. Duties of trustee and examiner

(a) A trustee shall--

(1) perform the duties of a trustee specified in sections 704(2), 704(5), 704(7), 704(8), and 704(9) of this title;
(2) if the debtor has not done so, file the list, schedule, and statement required under section 521(1) of this title;
(3) except to the extent that the court orders otherwise,

investigate the acts, conduct, assets, liabilities, and financial condition of the debtor, the operation of the debtor's business and the desirability of the continuance of such business, and any other matter relevant to the case or to the formulation of a plan;
(4) as soon as practicable--
(A) file a statement of any investigation conducted under paragraph (3) of this subsection, including any fact ascertained pertaining to fraud, dishonesty, incompetence, misconduct, mismanagement, or irregularity in the management of the affairs of the debtor, or to a cause of action available to the estate; and
(B) transmit a copy or a summary of any such statement to any creditors' committee or equity security holders' committee, to any indenture trustee, and to such other entity as the court designates;
(5) as soon as practicable, file a plan under section 1121 of this title, file a report of why the trustee will not file a plan, or recommend conversion of the case to a case under chapter 7, 12, or 13 of this title or dismissal of the case;
(6) for any year for which the debtor has not filed a tax return required by law, furnish, without personal liability, such information as may be required by the governmental unit with which such tax return was to be filed, in light of the condition of the debtor's books and records and the availability of such information; and
(7) after confirmation of a plan, file such reports as are necessary or as the court orders.

7. Rule 41. Dismissal of Actions

(a) Voluntary Dismissal: Effect Thereof.

(1) By Plaintiff; by Stipulation. Subject to the provisions of Rule 23(e), of Rule 66, and of any statute of the United States, an action may be dismissed by the plaintiff without

order of court (i) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs, or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action based on or including the same claim.

8. V.T.C.A., Civil Practice & Remedies Code § 41.004

(a) Except as provided by Subsection (b), exemplary damages may be awarded only if damages other than nominal damages are awarded.

(b) Exemplary damages may not be awarded to a claimant who elects to have his recovery multiplied under another statute.

9. 11 U.S.C.A. § 105(a)

(a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

10. 11 U.S.C.A. § 524(a)

(e) Except as provided in subsection (a)(3) of this section, discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt.

11. Federal Rules of Bankruptcy Procedure, Rule 4007

(c) Time for filing complaint under § 523(c) in a chapter 7 liquidation, chapter 11 reorganization, or chapter 12 family farmer's debt adjustment case; notice of time fixed

A complaint to determine the dischargeability of a debt under § 523(c) shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a). The court shall give all creditors no less than 30 days' notice of the time so fixed in the manner provided in Rule 2002. On motion of a party in interest, after hearing on notice, the court may for cause extend the time fixed under this subdivision. The motion shall be filed before the time has expired.

12. TX FIN 305.008. Criminal Penalty

(a) A person commits an offense if the person contracts for, charges, or receives interest on a transaction for personal, family, or household use that is greater than twice the amount authorized by this subtitle.

(b) An offense under this section is a misdemeanor punishable by a fine of not more than $1,000.

13. 11 U.S.C.A. § 1129 (a)(7)(A)(ii) and (b)

(ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the

effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under chapter 7 of this title on such date

(B) if section 1111(b)(2) of this title applies to the claims of such class, each holder of a claim of such class will receive or retain under the plan on account of such claim property of a value, as of the effective date of the plan, that is not less than the value of such holder's interest in the estate's interest in the property that secures such claims.

14. Rule 3007. Objections to Claims

An objection to the allowance of a claim shall be in writing and filed. A copy of the objection with notice of the hearing thereon shall be mailed or otherwise delivered to the claimant, the debtor or debtor in possession and the trustee at least 30 days prior to the hearing. If an objection to a claim is joined with a demand for relief of the kind specified in Rule 7001, it becomes an adversary proceeding.

APPENDIX E

ENTERED
May 8, 1997
THOMAS A. WILDER
DISTRICT CLERK
TARRANT COUNTY TEXAS

No. 67-156473-94

STEPPES APARTMENTS, LTD. Plaintiff, and JOHN L. FEECE, Intervenor Plaintiff, v. DONALD E. ARMSTRONG, TRUSTEE OF THE DONALD E. ARMSTRONG FAMILY TRUST AND THE DONALD E. ARMSTRONG CHARITABLE REMAINDER UNITRUST, Defendant.	IN THE DISTRICT COURT TARRANT COUNTY, TEXAS 67TH JUDICIAL DISTRICT

MODIFIED JUDGMENT

ON THE 19th day of August, 1996, came on to be heard the above-styled and numbered cause. The Plaintiff, The Steppes Apartments, Ltd., appeared by and through its duly authorized representatives and its attorney of record. The Intervenor, John Feece, appeared in person, and by and through his attorney of record. The Defendant, Donald E. Armstrong, as Trustee of The Donald E. Armstrong Family Trust (the "Family Trust") and the Donald E. Armstrong Charitable Remainder Unitrust (the "Unitrust") appeared in person, and by and through his attorney of record.

The Plaintiff and the Intervenor announced ready. The Defendant as Trustee for the Unitrust and the Family Trust filed a Plea to the Jurisdiction to the Court or In the Alternative Plea in Abatement or Motion for Continuance.

The Court considered the Defendant's Plea to

the Jurisdiction of the Court or In the Alternative Plea in Abatement or Motion for Continuance. The Court found that the Court was entitled to proceed to the final exercise of jurisdiction over the subject matter of this suit despite the transfer of the two Notes made the subject of this suit by the Defendant to Wasatch Growth, L.L.C. ("Wasatch"), and Summit Growth, Inc. ("Summit"). The Court also found that the transfer by the Defendants pendente lite is subject to the lis pendens doctrine. Consequently, the Court finds that Summit and Wasatch are not necessary parties to this litigation, and that Defendant's Plea to the Jurisdiction to the Court or In the Alternative Plea in Abatement or Motion for Continuance should be DENIED.

IT IS, THEREFORE, ORDERED that Defendant's Plea to the Jurisdiction to the Court or In the Alternative Plea in Abatement or Motion for Continuance be and it is hereby DENIED.

No party having requested a trial by jury, the Court proceeded to hear the case. After the Court heard the evidence and rendered judgment in this cause on September 23, 1996, the Defendant, Donald E. Armstrong, Trustee of the Donald E. Armstrong Family Trust and the Donald E. Armstrong Charitable Remainder Unitrust, objected to the entry of judgment because of the failure of the Plaintiff to give notice to those persons or entities interested in the Donald E. Armstrong Family Trust and the Donald E. Armstrong Charitable Remainder Unitrust ("the Trust Estates") of this action pursuant to § 115.015 et seq., of the Texas Trust Code. Having considered the Defendant's objection, this Court vacated the previous judgment and ordered that Plaintiff give notice of this proceeding to those persons or entities interested in the trust estates. The Court also ordered those persons or entities interested in the trust estates to appear and show cause why this judgment should not be entered

("the Show Cause Hearing").

Thereafter, the Plaintiff and Intervenor served notice of the Show Cause Hearing by personal service and by certified mail, return receipt requested to those persons or entities interested in the Trust Estates. The Clerk of the Court also served the persons or entities interested in the Trust Estates with a Show Cause Order by certified mail, return receipt requested.

On the 31st day of March 1997 came on be heard the Show Cause Hearing. Donald E. Armstrong appeared in person and through his attorney of record both as trustee of the Trust Estates and as a person or entity interested in the Trust Estates. Jennifer Potter and Jerry B. James appeared in person and through their attorney of record asserting to be persons interested in the Trust Estates. The National Ability Center and the Boy's Club of San Diego appeared through their attorney of record. The Attorney General of the State of Texas waived notice of the Show Cause Hearing. Rosa Vasquez and Antoinette Vasquez Armstrong, as persons or entities interested in the Family Trust estate, did not appear at the Show Cause Hearing to contest the entry of judgment. Norman Nouskajian, as a person or entity interested in the Family Trust made no appearance and has made no appearance in this cause. John L. Feece appeared in person and through his attorneys of record on behalf of Plaintiff and the Intervenor. After hearing the evidence and argument of counsel, the Court is of the opinion and finds that the Proposed Modified Judgment previously served upon the persons or entities interested in the trust estates should be entered because the persons or entities interested in the Trust Estates failed to show cause as to why judgment in this case should not be entered.

IT IS, ACCORDINGLY, ORDERED, ADJUDGED, DECREED and DECLARED as follows:

1. Plaintiff substantially performed its obligations under the two Notes made the subject of this lawsuit and all liens securing their payment.

2. Defendant, Donald E. Armstrong, as Trustee of the Unitrust, is not entitled to accelerate the unpaid principal and interest balance of the Note made by Plaintiff on September 29, 1994, payable to the Order of the Unitrust ("The Unitrust Note"), in the original principal amount of $1,071,500.00, as of November II, 1994.

3. The Defendant, Donald E. Armstrong, as Trustee of the Family Trust, is not entitled to accelerate the unpaid principal balance of the Promissory Note made by Plaintiff on September 29, 1994, payable to the Order of the Family Trust ("The Family Trust Note") in the original principal amount of $375,250.00 as of November 11, 1994.

4. Defendant, as Trustee for both the Family Trust and the Unitrust does not now and has never had the right to impose a seven percent (7%) late charge on the unpaid principal balance of the Unitrust Note and the Family Trust Note.

5. IT IS, FURTHER ORDERED, ADJUDGED, and DECREED that Defendant, Donald E. Armstrong, as Trustee of the Unitrust, forfeit all principal as well as interest under the Unitrust Note.

6. IT IS, FURTHER ORDERED, ADJUDGED, and DECREED that Defendant, Donald E. Armstrong, as Trustee of the Family Trust, forfeit all principal as well as interest under the Family Trust Note.

7. The Unitrust Note is hereby declared to be null and void, and of no force and effect. Similarly, the Deed of Trust recorded in Volume 11743 at Page 0750 of the Deed of Trust Records of Tarrant County, Texas as well as all other liens securing the payment of such Note, is hereby declared null and void, and of no force and effect. Plaintiff owns the real property described on Exhibit "A" attached hereto free and clear of any liens securing the Unitrust Note.

8. The Family Trust Note is hereby declared null and void and of no force and effect. Similarly, the Deed of Trust recorded in Volume 11743 at Page 0775 of the Deed of Trust Records of Tarrant County, Texas, as well as all other liens securing payment of the Note to the Family Trust, are hereby declared null and void, and of no force and effect. Plaintiff owns the real property described on Exhibit "A" attached hereto free and clear of any liens securing the Family Trust Note.

9. Plaintiff have and recover judgment of and from Defendant, Donald E. Armstrong, as Trustee of the Unitrust (but not individually), in the amount of $495,783.22 as follows:

a. $160,864.65 representing three times the amount of usurious interest contracted for, charged or received as defined in Article 5069-1.06(1) V.A.T.S.;

b. $334,918.57, representing all amounts paid as principal as well as interest and all other charges on the Unitrust Note (which includes unused tax and insurance impounds and other sums paid into the Registry of this Court).

10. Plaintiff have and recover judgment of and from Defendant, Donald E. Armstrong, in his capacity as Trustee of the Family Trust (but not individually), in the amount of $391,128.62 as follows:

a) $61,353.18, representing three times the amount of usurious interest contracted for, charged, or received under the Note made payable to the Family Trust, as defined in Article 5069-1.06(1);

b) $329,775.44, representing all amounts paid as principal as well as interest and all other charges paid on the Family Trust Note (which includes sums paid on the Family Trust Note in the Registry of the Court).

11. The Clerk of this Court is hereby ordered to deliver to Plaintiff, the sum of

$138,861.34, together with interest earned on all funds deposited in the Registry of the Court. Donald E. Armstrong, in his capacity as Trustee of the Unitrust, is entitled to a credit of $49,036.26, together with interest earned on sums paid into the Registry of the Court on the judgment against him described in Paragraph 9 above upon the Clerk's payment as provided herein. Defendant, Donald E. Armstrong, in his capacity as Trustee of the Family Trust is entitled to a credit of $89,825.08 together with interest earned on sums paid into the Registry of the Court on the judgment against him described in Paragraph 10 above upon the Clerk's payment as provided herein. The District Clerk's delay of thirty (30) days in disbursing such funds is waived.

12. Plaintiff have and recover joint and several judgment against Donald E. Armstrong, in his capacity as Trustee of both the Unitrust and the Family Trust (but not individually), in the amount of $435,301.90, as reasonable and necessary attorneys fees for services rendered through time of trial.

13. Plaintiff have and recover joint and several judgment against Donald E. Armstrong, in his capacity as Trustee of both the Unitrust and the Family Trust (but not individually), the sums listed below as reasonable and necessary attorney fees for services rendered in the following circumstances:

$10,000.00 - in the event that Defendant files post-judgment motions, but such motions are denied by the trial court;

$30,000.00 - in the event that Defendant files an appeal to the Fort Worth Court of Appeals, but such appeal is unsuccessful;

$20,000.00 - in the event that Defendant files an Application for Writ of Error in the Supreme Court of Texas, but such application is not granted;

$10,000.00 - in the event the Application for Writ of Error to the Supreme Court of Texas is granted, but the appeal to Supreme

Court of Texas is unsuccessful;

$15.000.00 - in the event that Defendant files a Petition for Writ of Certiorari in the United States Supreme Court, but such petition is not granted;

$10,000.00 - in the event a Petition for Writ of Certiorari is granted, but the appeal to the United States Supreme Court is unsuccessful.

14. Defendant take nothing by virtue of its claims against Plaintiff and intervenor, and all affirmative relief sought by Defendant against Plaintiff and Intervenor is DENIED.

15. Defendant, Donald E. Armstrong as Trustee of both the Unitrust and the Family Trust, his agents, servants, employees and attorneys, be, and they are hereby permanently restrained and enjoined from: (i) declaring Plaintiff in default, and enforcing the Unitrust and Family Trust Notes (and the liens securing their payments), (ii) taking any action to collect the Unitrust and Family Trust Notes, and (iii) from prosecuting or seeking any relief in Cause No. CV-754507 filed in the Superior Court of Santa Clara County, California, styled Donald E. Armstrong, Trustee of the Donald E. Armstrong Family Trust and the Donald E. Armstrong Charitable Remainder Unitrust v. John L. Feece and Does 1 thru 20, against Plaintiff and Intervenor in any manner, or instituting or prosecuting any similar action against Plaintiff, (or any of its partners, including John L. Feece, Intervenor), which involves the Unitrust and Family Trust Notes, and (iv) foreclosing on the real property described in Exhibit "A" attached hereto or attempting to appoint a receiver or attempting to enforce any assignment of rents.

16. All costs of Court herein are taxed against the Defendant.

17. All writs and processes for the enforcement and collection of this Judgment or the costs of court may issue as necessary.

18. All other relief not expressly granted in

this Judgment is DENIED

19. This Judgment shall bear interest at the rate of 10% per annum from the date hereof.

SIGNED this 8TH day of May 1997.

\s\

JUDGE PRESIDING

Exhibit "A"

Lot D, Block 3, RIDGMAR PLAZA, an Addition to the City of Fort Worth, Tarrant County, Texas, according to plat recorded in Volume 388-26, Page 77, Deed Records of Tarrant County, Texas.
AND
Lot E, Block 3, RIDGMAR PLAZA, an Addition to the City of Fort Worth, Tarrant County, Texas, according to plat recorded in Volume 388-45, Page 84, Deed Records of Tarrant County, Texas.
AND
Part of Lot 16, Block 9, RIDGMAR, an Addition to the City of Fort Worth, Tarrant County, Texas, according to plat recorded in Volume 388-36, Page 30, Deed Records of Tarrant County, Texas, and being more particularly described as follows:
BEGINNING at the West corner of said Lot 16;
THENCE North 46 degrees 37 minutes East with the Northwest line of said Lot 16, 149.7 feet to the North corner of said Lot 16 a point on a curve in the Northeast line of said lot and in the Southwest line of Taxco Road from which the center of said curve bears South 46 degrees 42 minutes West 722.53 feet;
THENCE Southeasterly with said curve through a central angle of 3 degrees 22 minutes for a distance of 42.3 feet to the end of said curve;
THENCE continuing with said street and lot line South 39 degrees 56 minutes East 22.7 feet; THENCE South 52 degrees 09 minutes West 154.8 feet to a point on the Southwest line of said lot;
THENCE North 35 degrees 23 minutes West with said lot line 50.5 feet to the PLACE OF BEGINNING;
And being part of the property conveyed to George M. Underwood, Jr. and George M. Underwood, III by deed from J. C. Pace, Jr., dated March 1, 1972, recorded in Volume 5199, Page 925, Deed Records of Tarrant County, Texas.

APPENDIX F

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH

ENTERED
UNITED STATES
BANKRUPTCY COURT
DISTRICT OF UTAH
SEPTEMBER 7, 2001
WILLIAM C. STILLGEBAUER
CLERK OF COURT
BY: DEPUTY CLERK

In re MOUNTAIN PACIFIC VENTURES, INC., Debtor.	Bankruptcy Case No. 99-2218 Chapter 11
ROGER G. SEGAL, Chapter 11 Trustee of the bankruptcy estate of MOUNTAIN PACIFIC VENTURES, INC., Plaintiff, v. STEPPES APARTMENTS, LTD. and Does 1 through 6 inclusive, Defendants.	Adv. Proceeding 99-2218 ORDER GRANTING TRUSTEE'S MOTION FOR SUMMARY JUDGMENT

FACTS

In 1996, a Texas State Court entered a judgment against the Donald E. Armstrong Family Trust (the "Family Trust") and in favor of Steppes Apartments Ltd. ("Steppes") for violation of Texas usury laws. It ruled that notes totaling over $1,300,000.00 could not be collected by the Family Trust and awarded Steppes a judgment of $391,128.62 plus $530,301.90 in attorney fees.

In August of 1997, Steppes commenced an action in the United States District Court for the District of Utah naming only Donald Armstrong ("Armstrong") and the Family Trust as defendants.

On May 5, 1998, Steppes filed a motion with the United States District Court seeking leave to amend its complaint.

On May *6,* 1998, Steppes recorded a lis pendens in Summit County against the property owned by Armstrong, Willow Brook Cottages, LLC, and against all property owned by Mountain Pacific Ventures, Inc. ("MPV") located in Summit County.

On May 7, 1998, counsel for MPV wrote to counsel for Steppes, asking that Steppes immediately release or correct the lis pendens.

On June 18, 1998, the United States District Court granted Steppes' motion for leave to file amended complaint.

On June 18, 1998, Steppes filed its amended complaint which, among other things, added MPV as a defendant.

The amended complaint identifies numerous parcels of real property located in Summit County, Utah, and seeks, in part, a judgment that real property which is property of the MPV estate be declared as vested in the Family Trust, that any fraudulent transfer of property to MPV be avoided, for damages against MPV and others, for an injunction against the MPV prohibiting the transfer or disposition of MPV's property, for the issuance of a declaratory judgment that MPV and others are alter egos of each other, for a declaratory judgment that Steppes' modified judgment is applicable to MPV and others, for the imposition of a constructive trust against MPV and others, and for an award of attorney fees and costs against MPV and others.

On March 10, 1999, MPV filed a Chapter 11 petition before this Court as case # 99C-22588.

On June 6, 1999, MPV initiated this adversary proceeding to have Steppes' lis pendens declared void or voidable as a wrongful lien and for a judgment declaring that Steppes has no claim against MPV or the estate of MPV.

On June 30, 1999, Steppes filed its proof of claim in this case. The proof of claim contains a five-page summary describing Steppes' theory of recovery including fraudulent transfer, civil conspiracy, abuse of the corporate entity /alter ego, ownership interest, constructive trust and other claims. The five-page summary refers to and incorporates a copy of Steppes' amended complaint filed in the United States District Court on June 18, 1998, as a source of many of the facts and causes of action underlying Steppes' claim/interest. The five-page summary and the amended compliant both contain numerous allegations that Armstrong was either the originator of or an intermediary of certain fraudulent transfers, civil conspiracies, instrumental in abuse of corporate entity, or an intermediary in a fraudulent transfer of stock. Other than the allegations involving Armstrong, the five-page summary and the amended complaint contain few specific allegations that are stated with particularity.[1]

On July 12, 1999, Roger G. Segal ("Segal") was appointed to serve as the Chapter 11 trustee of the MPV bankruptcy proceeding.

On June 15, 2000, Armstrong filed personal bankruptcy under Chapter 11 of the Bankruptcy

---

[1] Although Steppes' amended complaint contains seven causes of action including theories of alter ego, conspiracy, unjust enrichment, and constructive trust, each of Steppes' theories sound in fraud and are subject to the pleading requirements of Rule 9(b) as incorporated by F.R.B.P. 7009.

Code and was assigned case no. 00-26592.

On July 21, 2000, Segal filed a motion for summary judgment in this adversary proceeding seeking an order disallowing Steppes' claim against the bankruptcy estate of MPV and arguing that Steppes' lis pendens was a wrongful lien.

On September 13, 2000, Kenneth Rushton ("Rushton") was appointed as the Chapter 11 trustee in the Armstrong bankruptcy proceeding.

In October 2000, the Honorable Judith A. Boulden, ruled in the Armstrong bankruptcy proceeding, in part, that:

a. Steppes' proceeding on an alter ego action that is an asset of the debtor's bankruptcy estate would be a violation of the automatic stay;

b. Steppes' proceeding on a conspiracy theory, which would be an asset of the debtor's bankruptcy estate, would be a violation of the automatic stay;

c. To the extent of the transfers which were made directly from Mr. Armstrong to Mountain Pacific Ventures, Inc., Steppes' proceeding on a fraudulent conveyance action would be a violation of the automatic stay; and

d. Steppes' further proceeding in the Mountain Pacific Ventures, Inc. case would be a violation of the automatic stay.

On February 7, 2001, Steppes filed a cross motion for summary judgment on Segal's first cause of action seeking a ruling that Steppes' lis pendens was not a wrongful lien.

On April 17, 2001, Rushton filed a motion to intervene in this adversary proceeding arguing that as the trustee of the Armstrong bankruptcy estate, he has the sole right to seek recovery of property fraudulently

conveyed from Armstrong to MPV.

On May 23, 2001, Rushton's motion to intervene in this adversary proceeding was granted.

ANALYSIS

The propriety of filing a notice of lis pendens from a federal lawsuit is a matter governed by state law. Hamilton v. Smith, 80 F.2d 36 (10th Cir. 1986). Utah Code Annotated § 78-40-2 states as follows:

> In any action affecting the title to, or the right of possession of, real property the plaintiff at the time of filing the complaint or thereafter, and the defendant at the time of filing his answer when affirmative relief is claimed in such answer, or at any time afterward, may file for record with the recorder of the county in which the property or some part thereof is situated a notice of the pendency of the action, containing the names of the parties, the object of the action or defense, and a description of the property in that county affected thereby. From the time of filing such notice for record only shall a purchaser or encumbrancer of the property affected thereby be deemed to have constructive notice of the pendency of the action, and only of its pendency against parties designated by their real names.

The statute is specific in its requirements. One is only permitted to file a lis pendens "at the time of filing the complaint or thereafter." Steppes filed its lis pendens on May 6, 1998, a full forty-two days prior to filing the amended complaint naming MPV as a defendant. The statute does not permit the filing of a lis pendens prior to the filing of the complaint. At the time Steppes filed its lis pendens against the MPV's property, MPV was not even a party to the lawsuit. Steppes' filing of a motion for leave to file amended complaint does not satisfy the requirements of U.C.A. § 78-

40-2. The motion for leave to file amended complaint did not make MPV a party to any lawsuit and did not make MPV's property the subject of a pending lawsuit wherein title to, or possession of MPV's property was put into controversy. A lis pendens that is not supported by a pending legal action is wrongful. Birch v. Fuller, 337 P.2d 964 (Utah 1959). The sole purpose of recording a notice of lis pendens is to give constructive notice of the pendency of the lawsuit. A lis pendens' only foundation is the legal action; it has no existence independent of it. Hansen v. Kohler, 55 P.2d 186 (Utah 1976). Further, a lis pendens that is wrongfully filed because it lacks a pending lawsuit to support it cannot be cured by the subsequent filing of a lawsuit. Winters v. Schulman, 977 P.2d 1218 (Utah App. 1999). Steppes' filing of a lis pendens against MPV's property prior to amending its complaint to name MPV as a party defendant was wrongful. Liability for such a wrongful lis pendens can be sought pursuant to Utah Code Annotated § 78-40-2. Winters v. Schulman, 2001 WL 357124 (Utah App. 2001).

STEPPES' PROOF OF CLAIM

Steppes' proof of claim seeks recovery under a number of theories that originate with Armstrong or involve Armstrong as an intermediary. Theories that involve Armstrong in such a way belong solely to Rushton, the trustee of the Armstrong bankruptcy estate, who holds the exclusive right to all property of the estate including all avoiding powers. For Steppes to proceed on an alter ego theory, conspiracy theory, fraudulent transfer theory, or other further proceeding that is property of the Armstrong's estate is a violation of the automatic stay. *See In re Donald E. Armstrong, No. 00-26592 (Bankr. D. Utah, October 31,* 2000).

Having determined that any theory of recovery that originates in Armstrong or involves Armstrong as an intermediary belongs solely to Rushton, the Court must now determine what remains of Steppes' claim in this bankruptcy

proceeding. The Court finds that it is not possible to determine what remains of Steppes' claim after deleting the Armstrong causes of action. This is because Steppes' proof of claim lacks sufficient detail to enable the Court to make such a determination. A complaint sounding in fraud must set forth the time, place, and contents of the fraudulent activity, the identity of the party involved in the fraudulent activity, and the consequences thereof. Rule 9(b)'s purpose is to provide notice of plaintiff's claims and the factual ground upon which they are based. A statement that alleges that misrepresentations were made and continue to the present time does not alert defendants to a sufficiently precise time frame to satisfy Rule 9(b) requirements. Koch v. Koch Industries, Inc., 203 F.3d 1202 (10th Cir. 2000). Once the causes of action belonging to Armstrong's bankruptcy estate are removed from Steppes' proof of claim, what remains of Steppes' claim is so vague and lacking in detail that it fails to meet the requirements of F.R.B.P. 9(b) and will be denied if not promptly amended.

Based upon the above, it is hereby

ORDERED that because Steppes' lis pendens does not comply with the requirements of Utah Code Annotated § 78-40-2, the lis pendens was wrongfully filed and is invalid, and it is further

ORDERED that Steppes' causes of action that either originate with Armstrong or involve Armstrong as an intermediary are disallowed, and it is further

ORDERED that the remainder of Steppes' proof of claim is denied for failure of Steppes to plead its claim with sufficient particularity. However, Steppes will be given fifteen days from the date of this Order to amend its proof of claim in a way consistent with this Order and to plead its claim with sufficient particularity to satisfy the requirements of F.R.B.P 7009, and it is further

ORDERED that upon being served with Steppes' amended claim, Segal shall have sixty days to object to the

amended claim if he so chooses.

DATED this _7_day of September, 2001.

BY THE COURT:

/s/
GLEN E. CLARK, CHIEF JUDGE
UNITED STATES BANKRUPTCY COURT

APPENDIX G
EXCERPTS FROM HEARING TRANSCRIPT
ON CROSS MOTIONS FOR SUMMARY JUDGMENT

In re:)
MOUNTAIN PACIFIC VENTURES, INC.,)
Case No. 99-22588
Debtor.)

MOUNTAIN PACIFIC VENTURES,)
Plaintiff,)
vs.) Case No. 99-2218
STEPPES APARTMENTS, LTD.,)
Defendant.)

***

BEFORE THE HONORABLE GLEN E. CLARK

Thursday, May 24, 2001
1:30 P.M.
CROSS MOTIONS FOR SUMMARY JUDGMENT

Page 1

THE COURT: You began your reply memorandum by stating the present motion can be resolved by answering one question. Does Steppes' amended complaint affect the title to or possession of MPV's real property in Summit County. Then you go on to refer to the complaint. Which I've done as well because I'd like to find an easy answer if I can. You say -- you refer the court to three counts. Count I, fraudulent transfer. And you state that Count I of the amended

complaint alleges that MPV was the recipient of fraudulent transfers. So, -- ..... .

Page 24

THE COURT: Take your time with this question because it's been bothering me.

Page 25

And I couldn't find anything in Count IV that identifies any real property of MPV which was fraudulently or otherwise transferred to it. . . . .

THE COURT: That's fine but you don't allege any property, real property of MPV in Count III, I don't believe. I was just concentrating on the counts that you called my attention to.

Page 26

THE COURT: Fine. You'd like to have a judgment lien on all of Mountain Pacific's property. But it doesn't seem to me that this is an action -- with respect to Mountain Pacific is an action affecting title to or right of possession of real property. You want a money judgment against MPV that will allow you to get its property, isn't that true? . . . . . .

THE COURT: I know what you want in the complaint. But in addition what you've gotten for yourself is a prejudgment writ of attachment.

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APPENDIX H

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH
Entered on Docket: 09/08/2004

In re Donald Erwin Armstrong, Debtor.	Bankruptcy Case No. 00-26592 Chapter 11 ORDER GRANTING IN PART AND DENYING IN PART ARMSTRONG'S MOTION FOR PERMISSION TO FILE MOTION TO MODIFY PLAN OF REORGANIZATION

The motion of Donald Erwin Armstrong ("Armstrong") for permission to file motion to modify plan of reorganization came on for hearing on the 24th day of August at 1:00 p.m. before the Honorable Judge Tom R. Cornish. Armstrong appeared in behalf of himself, pm se, Steppes Apartments, Ltd. was represented by Jeffery L. Shields, and Zachary T. Shields, Keneth Rushton, the Chapter 11 Trustee of this bankruptcy proceeding (the "Trustee"), was represented by Lon Jenkins and Roger Segal, the trustee in the case of Mountain Pacific Ventures, Inc., was represented by Julie Bryant.

Although the motion before the court was a motion for permission to file a motion to modify the revised plan of reorganization, the parties argued both with respect to permission to file the motion as well as the merits of Armstrong's motion to modify the plan. That being the ease, the Court will rule on the motion for permission to file and will rule with respect to the merits of Armstrong's motion to modify

the confirmed plan.

Armstrong's motion seeks permission to modify a portion of the Chapter 11 plan confirmed by Order of the Court on January 31, 2002. Section 12.1.2. of the confirmed plan provides for a Litigation Injunction which enjoins Armstrong, the Armstrong Trusts, and all other Armstrong Entities from commencing or continuing any litigation against the Steppes Parties, Roger Segal, the Trustee and any of their principals, professionals, agents, and assigns based upon (1) claims or causes of action releases pursuant to the term of the plan and the Steppes Settlement and (2) claims or causes of action based upon action taken by the Trustee, Segal, the Steppes Parties and any of those parties' principals, professionals, agents, and assigns in effectuating the Steppes Settlement and this Ran. The injunction also provides that Armstrong must apply to the Court for authority to commence or continue litigation against any of these parties or their principals, professionals, agents, or assigns.

Armstrong argues, among other things, that the Litigation Injunction should be removed from the confirmed plan because at some time in the future, Steppes or one of the Steppes Parties may bring an adversary proceeding against Armstrong, the Armstrong Trusts or one of the Armstrong Entities and if the Litigation Injunction is not removed from the plan, Armstrong, the Armstrong Trusts and/or the Armstrong Entities will be prohibited from raising defenses and counterclaims in the adversary proceeding.

Armstrong's motion was opposed arguing that the Litigation Injunction was a necessary component of the confirmed plan, that parties have relied upon the Litigation Injunction and that the Code does not be permit modification of the confirmed plan by Armstrong.

11 U.S.C. § 1127(b) provides that the reorganized debtor may modify a plan at any time after confirmation and before substantial consummation of such plan. Because Armstrong is the reorganized debtor in this case, there is

nothing in § 1127 of the Code which prevents Armstrong from seeking to modify the confirmed plan.

The Court finds that the Litigation Injunction continues to be a necessary part of the confirmed plan and that it is not in the best interests of the estate or creditors for the Litigation Injunction be removed. This decision today is further necessitated by reason that this Court has entered filing restrictions because of Armstrong's disregard for the Litigation injunction. It should be noted that the Utah District Court, Bankruptcy Appellate Panel, and the Tenth Circuit Court of Appeals have also entered filing restrictions. With respect to Armstrong's concerns that the Litigation Injunction may prohibit the filing of defenses or counterclaims to adversary proceedings filed at some time in the future by Steppes or one of the Steppes parties, the Court will treat Armstrong's motion as a motion to modify under 11 U.S.C. § 1127(b) and will grant the motion with respect to the very narrow circumstances described above. Therefore, it is hereby

ORDERED that Armstrong's motion for permission to file a motion modify the Revised Plan of Reorganization is denied; and it is further

ORDERED that in the event and only in the event that Steppes or one of the Steppes Parties brings an adversary proceeding against Armstrong, the Armstrong Trusts or one of the Armstrong Entities and any time after August 25, 2004, the Revised Plan of Reorganization will be modified to permit Armstrong, the Armstrong Trusts and/or the Armstrong Entities to raise defenses and counterclaims in the adversary proceeding or proceedings brought by Steppes or one of the Steppes parties after August 25, 2004; and it is further

ORDERED that Armstrong's motion to modify the Revised Plan of Reorganization is denied in all other respects.

Dated this 3rd day of September, 2004,

BY THE COURT

/s/
Judge Tom R. Cornish
United States Bankruptcy Court

APPENDIX I
SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between Steppes Apartments, Ltd. ("Steppes"); Kenneth A. Rushton ("Rushton"), Chapter 11 Trustee of the Donald E. Armstrong Bankruptcy Estate in Case No. 00-26592 (the "Armstrong Estate"); and Roger G. Segal ("Segal"), Chapter 11 Trustee of the Mountain Pacific Ventures, Inc., Bankruptcy Estate in Case No. 99-22588 (the "MPV Estate"). The parties hereby settle the claims in the above-stated bankruptcy cases using the following material points and terms:

I. SETTLEMENT BETWEEN STEPPES, RUSHTON AND THE ARMSTRONG ESTATE

I. A. The Texas Litigation.

I.A.1 Control and Dismissal of the Texas Litigation

Rushton will obtain control of the defendants' rights relating to the Texas litigation pending in the 67th District Court of Tarrant County, State of Texas, and related appeals giving rise to the Judgment attached hereto as Exhibit "A" (the "Texas Judgment") and the decision entered by the Texas Court of Appeals dated July 6, 2001 attached hereto as Exhibit "B" and all directly related litigation pending in Texas (hereinafter collectively the "Texas Litigation") which involve Donald E. Armstrong ("Armstrong") and/or certain Trusts related to or controlled by the Debtor including the "Donald E. Armstrong Family Trust" and the "Donald E. Armstrong Charitable Remainder Unitrust," (hereinafter collectively the "Trusts") and Steppes. Rushton, if necessary to effect

the intent of this paragraph, will seek a bankruptcy court determination that the Armstrong Estate is the real party in interest in the Texas Litigation, and will seek control of the Texas Litigation by taking over the Trusts and/or their assets in the following manner: through enforcement and execution of the judgments attached hereto as Exhibits C and D, through a foreclosure of the assets of the Trusts (the current appellants), through substitution as trustee of the Trusts, through revocation of the Trusts, or through stipulation to the oral ruling of Judge Stewart in the Federal Court litigation.

After obtaining control of the Texas Litigation, Rushton will obtain a dismissal with prejudice of the Trust's counterclaim and appeals in the Texas Litigation regardless of the procedural posture of the Texas Litigation. However, if the Texas Litigation has been finally resolved with no pending appeal or writ, Rushton shall obtain any residual rights of the Trusts in such litigation but need not obtain dismissal. After Rushton obtains control of the Texas Litigation and, to the extent necessary, obtains dismissal of the Trust's counterclaim and appeals in the Texas Litigation, Rushton will release and remove the lis pendens on the Steppes Apartments.

The dismissal of the Texas Litigation as set forth above will occur after the confirmation of a Plan of Reorganization in the Armstrong Chapter 11 case (the "Armstrong Case") which includes the approval of this Settlement Agreement. After obtaining control of the Trusts, Rushton shall also remove the Lis Pendens filed by the Trusts which encumber property owned by Steppes in Texas. It is anticipated that the dismissal of the Texas Litigation

and release of the Lis Pendens can occur within six months of the confirmation of the plan of reorganization in the Armstrong chapter 11 case. No ruling by any Court in the Texas Litigation shall have any impact on the obligations of the parties hereto to perform pursuant to this Settlement Agreement.

I.A.2 Continuing Effect of Judgment in Texas Litigation.

The Judgment entered in the Texas litigation shall remain in effect, except that any and all claims of whatever nature that Steppes holds, for monetary damages or otherwise, whether known or unknown, liquidated or unliquidated against the Armstrong Estate shall be deemed satisfied and discharged in full upon payment of the sum of $120.795.00 from the Armstrong Estate, as set forth under Section I.B. herein and upon compliance by Rushton with his other obligations herein.

I.A.3 Rights of Parties if Rushton Cannot Obtain Dismissal of Texas Litigation.

If Rushton is unable to comply with his obligations in Section I.A.1. of this Settlement Agreement (i.e., to gain control over the Trusts' position in the Texas Litigation, to effect the dismissal of any pending appeals or writs in the Texas Litigation, and/or to release the lis pendens against the Steppes Apartments), and if Rushton shows that he has pursued all of the methods set forth in Section I.A.1. of this Settlement Agreement in his attempt to comply (or if Steppes and Rushton shall agree that the further pursuit of any method would be pointless

and/or futile), then, despite any language to the contrary in this Settlement Agreement, the following shall apply:

Steppes shall be entitled to an allowed unsecured claim in this proceeding in the amount of $1,398,979.00 ("Steppes Unsecured Claim"). This unsecured claim is a compromise amount based upon the proof of claim filed by Steppes in the Armstrong case. The Steppes Unsecured Claim shall be treated pari passu with other unsecured claims filed in the Armstrong Estate and shall be discharged in a like manner to other unsecured claims treated under the plan filed in the Armstrong chapter 11 case. The allowance of the Steppes Unsecured Claim shall not affect the payment of $120,795.00 to Steppes as set forth in Section II of this Settlement Agreement which amount has already been deducted and considered in calculating the amount of the Steppes Unsecured Claim.

I.A.4 Stay of Litigation Pending Approval of this Agreement.

Rushton will not seek to intervene or participate in the Texas Litigation prior to the date of confirmation of a Plan of Reorganization in the Armstrong Case that includes the terms of this Settlement Agreement. However, Rushton does not oppose and Steppes' agrees that it may take efforts in Texas, if necessary in Steppes sole judgment, to stay any proceeding in the Texas Litigation pending confirmation of a Plan of Reorganization in the Armstrong Case, or take any other action in the Texas Litigation which may be based upon this Settlement Agreement.

I. B. Satisfaction of Steppes' Claim and Release of Rushton and the Armstrong Estate.

On the effective date of a Plan of Reorganization confirmed in the Armstrong Estate, and in accord with the terms of such a Plan of Reorganization, Steppes will be distributed $120,795.00 from the Armstrong Estate. After payment of such claim and after Rushton has performed all other obligations owing to Steppes, all claims of whatever nature that Steppes holds, for monetary damages or otherwise, whether known or unknown, liquidated or unliquidated against the Armstrong Estate and Rushton and/or the employees, professionals, agents, successors-in-interest and assigns of the Armstrong Estate and Rushton. The satisfaction of Steppes' claims under the instant paragraph shall not impair the ability of Steppes or Steppes principals, professionals, agents, successors-in-interest and assigns to apply for, be awarded and be paid, as necessary and allowable, administrative fee awards including fees incurred by professionals, agents, successors in interest, and assigns of the Armstrong Estate and Rushton as allowable under the Bankruptcy Code and this Settlement Agreement. Rushton and Steppes agree that Steppes may make a substantial contribution to the estate in aiding in obtaining and defending the confirmation of a plan embodying this Settlement Agreement.

If Rushton is able to take control of the Trusts and dismiss the the Trust's counterclaims in the Texas Litigation and any pending appeals or writs therein and effect the release of the Lis Pendens on the Steppes Apartments, and provide the Steppes Parties (defined below) with a complete release under the terms set forth in part I.C. below, then Steppes shall release the Trusts from any and all claims of whatever nature that Steppes holds, for monetary damages or otherwise, whether known or unknown, liquidated or

unliquidated, and Steppes shall thereafter, remove and/or release any notices of lis pendens and foreign judgments arising out of the Texas Judgment. Otherwise, the Trusts shall not be granted a release, and Steppes shall retain any and all claims which Steppes has against the Trusts less any payments actually received under this Plan.

I. C. Release of Steppes.

Upon the effective date of a Plan of Reorganization confirmed in the Armstrong Case and in accord with the terms of such a Plan of Reorganization and to the extent this Settlement Agreement is approved by the Bankruptcy Court, Rushton and the Armstrong Estate shall release the Steppes Parties (defined below) from any and all claims arising from events that occur before the effective date of the confirmation of the Plan of Reorganization including claims of any nature whatsoever that Rushton or the Armstrong Estate hold for monetary damages or otherwise, whether known or unknown, liquidated or unliquidated against Steppes, or Steppes' employees, principals, professionals, agents, successors-in-interest and assigns. The Steppes Parties include Steppes, as well as Steppes' employees, principals, professionals, attorneys, agents, successors in interest and assigns and shall specifically include, but are not limited to, the following persons/entities: The "Steppes Parties" shall include, but are not limited to, the following persons/entities: John Feece, Rosalie Feece, Baxter Holdings, Inc., Jeffrey L. Shields, Zachary T. Shields, Callister Nebeker & McCullough, Robert Bodoin, Hill Gilstrap, Frank Hill, Frank Gilstrap, Sal Espino, Chris Harris, Ben Levinson, Victor Vilaplana, Dennis Wickham, Elizabeth Smith, and Seltzer Caplan McMahon Vitek, and any and all other attorneys of Steppes or their law firms.
Steppes and Rushton agree that the release contemplated under this Settlement Agreement and the Plan to be

confirmed in the Armstrong Case shall be as broad as is permitted by law. The release includes, without limitation, any and all causes of action related to any and all pre-confirmation conduct of the Steppes Parties, as well as to any and all post-confirmation conduct taken in connection with the Armstrong Case. The release includes any and all claims related to conduct taken in the Texas Litigation, in the filing of foreign judgments, in the filing and pursuit of the Federal Court litigation, Case No. 2:97cv7663, in the filing of notices of lis pendens, and in participating in the present bankruptcy case, as well as other bankruptcy cases involving Donald Armstrong or entities related to or controlled by Donald Armstrong or MPV. The release includes, without limitation, any obligation arising under to the promissory notes made or guaranteed by the Steppes Parties. The release includes any and all claims which MPV or Segal may have against the Steppes Parties, including but not limited to claims which are controlled by Rushton pursuant to Section II of this Settlement Agreement, infra. Furthermore, as an integral part of this release, on the effective date of a Plan of Reorganization confirmed in the Armstrong Case, or within a reasonable time thereafter, Rushton shall dismiss with prejudice the "wrongful lien litigation" against Steppes pending in the bankruptcy case of MPV as Adversary Proceeding No. 99PC-2218, over which Rushton obtains control under Section II.B. of this Settlement Agreement.

To the full extent permitted by law and to the extent Rushton holds or obtains applicable rights, the release of the Steppes Parties set forth in this Settlement Agreement shall be given by all entities over which the Armstrong Estate and/or the Trusts has any control or interest -- whether as settlor, trustee, beneficiary, shareholder, member, creditor, judgment creditor, successor-in-interest, assignee, or otherwise. Such entities shall include, without limitation, Wasatch Growth, L.L.C., Summit Growth, Inc., Mountain Pacific Ventures,

Inc., and Willow Brook Cottage, LLC. Rushton agrees that Rushton will assert the Armstrong Estate's ownership and control over the Trusts and all other entities over which the Armstrong Estate and/or the Trusts has any control or interest -- as necessary to effectuate the release against the Steppes Parties. Rushton and Steppes believe that Donald Armstrong has asserted, is presently asserting, and in the future will assert that Donald Armstrong owns or controls claims or causes of action against the Steppes Parties. Rushton shall use his best efforts to obtain a ruling, in the plan confirmation process or prior to that time, that Donald Armstrong does not own or control any claims against the Steppes Parties, and that any and all claims or potential claims against any of the Steppes Parties are property of Rushton and/or the Armstrong Estate and are included in this release.

I. D. Injunction Against Future Litigation.

The Plan of Reorganization confirmed in the Armstrong Case shall also include a permanent injunction enjoining Armstrong from commencing or continuing any litigation against the Steppes Parties, Segal, Rushton or any of those parties' principals, professionals, agents and assigns, based upon claims or causes of action released pursuant to the terms of this Settlement Agreement or a Plan of Reorganization which includes the terms of this Settlement Agreement. The Plan of Reorganization shall also contain a permanent injunction barring Armstrong from commencing or continuing causes of action based upon any action taken by Rushton, Segal, the Steppes Parties, or any of their principals, agents, attorneys, and related parties, in effectuating the settlement and the plan. The injunction shall apply to Donald Armstrong, individually, the Trusts, as well as any entity related to Donald Armstrong and controlled by him in whole or in part or any entity over which Donald

Armstrong asserts actual control (the "Armstrong Entities").

To assure compliance with the injunction, Rushton shall seek a provision in any injunction to be approved as part of a plan of reorganization that Donald Armstrong must apply to the bankruptcy court for authority to commence or continue litigation against the Steppes Parties, Segal, Rushton or any of those parties' principals, professionals, attorneys, agents and assigns. If approved by the bankruptcy court, the injunction shall provide that if Donald Armstrong desires to file or pursue any claim or litigation against the Steppes Parties, Segal, Rushton or any of those parties' principals, professionals, attorneys, agents and assigns, Donald Armstrong must first file an application with the bankruptcy court, showing that the desired litigation does not violate the terms of the Plan of Reorganization confirmed in the Armstrong Case, including the release and injunction contained in that Plan. After providing notice and a reasonable opportunity for response by the Steppes Parties, Segal, Rushton (and/or any of those parties' principals, professionals, attorneys, agents and assigns), the bankruptcy court will make a determination whether Donald Armstrong shall be permitted to pursue such claim or litigation. The bankruptcy court will grant authority to Donald Armstrong to commence a suit against a released party only upon a finding that such litigation does not violate the terms of the Plan of Reorganization confirmed in the Armstrong Case, including the release and injunction contained in that Plan. In the event Donald Armstrong files an application with the bankruptcy court under this section, and such application is denied by the Court, then the Steppes Parties, Segal, Rushton (and/or any of those parties' principals, professionals, attorneys, agents and assigns) shall be awarded reimbursement of all attorney's fees and costs reasonably incurred in relation to the application --including fees incurred in responding to the application and in

attending any hearing on the matter. Such reimbursement shall be obtained by application to the bankruptcy court, and shall be paid from the assets of the Armstrong Estate and/or the Reorganization Trust described in Section I.E., infra. Such reimbursement shall reduce the amount of funds available for disbursement under the Reorganization Trust (as defined below).

In the event the Armstrong Entities violate the permanent injunction set forth in the Plan of Reorganization confirmed in the Armstrong Case, by commencing or continuing litigation against the Steppes Parties, Segal, Rushton or any of those parties principals, professionals, attorneys, agents and assigns without bankruptcy court authority, or otherwise, and in the event that Rushton receives reliable information to conclude that a suit has been commenced against one of the released parties without Bankruptcy Court authority, Rushton shall take reasonable actions to seek enforcement of the permanent injunction in the bankruptcy court. The reasonable cost of such enforcement, including fees incurred by professionals, shall be considered a cost of administration of the Plan of Reorganization payable from funds remaining in the estate and/or the "Reorganization Trust" upon application to the bankruptcy court, as set forth in Section I.G., infra.

In addition, the reasonable expenses incurred by the Steppes Parties, Segal, Rushton (and/or any of those parties' principals, professionals, attorneys, agents and assigns), in defending against any claim or litigation brought in violation of the release or injunction shall be payable to the party which incurred such expenses from funds remaining in the estate and/or the "Reorganization Trust" upon application to the bankruptcy court, as set forth in Section I.G., infra.

I. E. Escrow of Funds.

All funds, property and other rights remaining after payment of all allowed administrative, priority, secured and unsecured claims against the Armstrong Estate pursuant to the terms of a confirmed Plan of Reorganization (including the $120,795.00 claim of Steppes provided for under this Settlement Agreement) less any allowed reserve for administrative claims necessary to consummate or defend the plan on appeal shall be held by Rushton in a "Reorganization Trust" fund.

I. F. Use of Reorganization Trust Funds in the Event that the Armstrong Entities Do Not Violate the Injunction.

If the Armstrong Entities do not violate the release and injunction set forth in the plan of reorganization, Donald Armstrong shall be entitled to receive disbursements from the Reorganization Trust as follows: Sixty (60) days after the effective date of the plan, Armstrong shall receive a distribution in the amount of one-fifth of the money in the Reorganization Trust, or $100,000 whichever is less. One year thereafter, Armstrong shall receive a payment of one-fifth of the funds remaining in the Reorganization Trust. One year thereafter, Armstrong shall receive a payment of one-fourth of the funds remaining in the Reorganization Trust. One year thereafter, Armstrong shall receive a payment of one-third of the funds remaining in the Reorganization Trust. One year thereafter, Armstrong shall receive a payment of one-half of the funds remaining in the Reorganization Trust. One year thereafter, Armstrong shall receive a payment of all of the funds remaining in the Reorganization Trust.

If any of the Armstrong Entities shall violate the release and/or injunction set forth in the plan of reorganization at

any time, all of Donald Armstrong's rights to payments from the Reorganization Trust pursuant to this Section I.F. shall be forfeited, and payments to Donald Armstrong, if any, shall be governed by Section I.G. of this Settlement Agreement.

I. G. Use of Reorganization Trust Funds in the Event the Armstrong Entities Violate the Injunction

In the event that any of the Armstrong Entities commences or pursues litigation against the Steppes Parties, Segal, Rushton (or any of those parties' principals, professionals, attorneys, agents, successors-in-interest and assigns) without first obtaining bankruptcy court authority, or in the event that any of the Armstrong Entities violates any other term of the release, the injunction, or the plan of reorganization, the following terms shall govern:

1. All payments to Donald Armstrong from the Reorganization Trust shall be discontinued immediately. No payments shall thereafter be made to Donald Armstrong except as otherwise ordered by the bankruptcy court in accordance with the terms of this Settlement Agreement and the plan of reorganization.

2. The party (or parties) against whom litigation is commenced or pursued shall be entitled to an award of professional fees (including, without limitation, attorneys' fees and accountant fees, as well as expenses and costs) to reimburse them for any professional fees reasonable incurred in defending against any action commenced by Armstrong in violation of the injunction and/or release set forth in this Settlement Agreement and the plan of reorganization confirmed in the Armstrong Case.

Such award shall be payable from the funds remaining in the Armstrong Estate and/or the Reorganization Trust, upon application to the bankruptcy court therefor.

3. Upon application to the Bankruptcy Court, and pursuant to the Bankruptcy Court's discretion, the party (or parties) against whom litigation is commenced or pursued shall be entitled to an award of sanctions arising from each of Donald Armstrong's violations of the injunction. Such sanction award shall be paid from the funds remaining in the Armstrong Estate and/or Reorganization Trust. Such award shall be in addition to the reimbursement of professional fees set forth above. Such sanction award shall be imposed for the purpose of sanctioning Donald Armstrong for violating the injunction, as well as to compensate the party (or parties) against whom litigation is commenced, for the costs, expenses, and damages (including delay, aggravation, and emotional damages) incurred as a result of Donald Armstrong's violation of the injunction.

4. Beginning with administrative type expenses, including expenses awarded under this section of the Settlement Agreement, accrued after the effective date, the payment of awards and reimbursement of professional fees to the Steppes Parties, Segal, Rushton (or any of those parties' principals, professionals, attorneys, agents, successors-in-interest and assigns) from the Reorganization Trust shall be made with equal priority. If there are insufficient funds or property in the Reorganization Trust available to pay all of the pending application for awards and reimbursement, the parties shall share

in the Reorganization Trust on a pro-rata basis based upon the total amounts of their claims.

5. Nothing in this Settlement Agreement shall prevent the Steppes Parties, Segal, or Rushton from pursuing and enforcing any claim, right, sanction, claim for damages, including exemplary damages, or cause of action against Donald Armstrong, individually, arising from Armstrong's violation of the injunction or release except to the extent such claim, right, or cause of action is subject to any automatic stay or discharged pursuant to bankruptcy law.

6. Any and all awards paid to the Steppes Parties, Segal, Rushton (or any of those parties' principals, professionals, attorneys, agents, successors-in-interest and assigns) pursuant to this Settlement Agreement and/or the plan of reorganization shall be payable from and shall reduce the funds in the Reorganization Trust.

7. If Donald Armstrong shall disobey the Bankruptcy Court's injunction, or any other Order of the Court, then the parties hereto may take any and all actions which are deemed necessary or prudent to enforce the injunction, and/or to obtain and maintain compliance with the injunction and/or the Orders of the Court. Such actions may include, but are not necessarily limited to, the following: seeking civil contempt of court remedies against Donald Armstrong; seeking sanctions against Donald Armstrong; and seeking criminal contempt of court sanctions, including the incarceration of Donald Armstrong. The parties hereby agree and stipulate that the reference to the Bankruptcy Court from the United States District Court for the District of Utah may be withdrawn, if

necessary to pursue criminal contempt of court sanctions, including incarceration, against Donald Armstrong. In the event that there are funds remaining in the Reorganization Trust after payment of all awards, fees, and costs to which the Steppes Parties, Segal, Rushton (or any of those parties' principals, professionals, attorneys, agents, successors-in-interest and assigns) may become entitled, payments from the Reorganization Trust may re-commence to Donald Armstrong upon petition by Armstrong to the Bankruptcy Court if, in accordance with such petition, the court finds (1) that Armstrong is in compliance with the injunction, plan of reorganization and releases and is likely to remain in compliance, (2) that the Steppes Parties, Segal, Rushton (or any of those parties' principals, professionals, attorneys, agents, successors-in-interest and assigns) have received the payment of all awards, sanctions, fees, and costs to which they are entitled under this Settlement Agreement and the plan of reorganization; and (3) that all litigation commenced or pursued by Donald Armstrong in violation of the release, the injunction, or the plan of reorganization has been dismissed with no rights of appeal remaining. If the above-cited conditions are met, the bankruptcy court may enter an order for the re-commencement of payments to Donald Armstrong out of the funds, if any, remaining in the Reorganization Trust, as follows: the first payment shall be made one year after the entry of the bankruptcy court's order for the recommencement of payment. The first payment shall be in an amount equal to one-fifth of the funds remaining in the Reorganization Trust. One year thereafter, Donald Armstrong shall receive a payment of one-fourth of the funds remaining in the Reorganization Trust.

One year thereafter, Donald Armstrong shall receive a payment of one-third of the funds remaining in the Reorganization Trust. One year thereafter, Donald Armstrong shall receive a payment of one-half of the funds remaining in the Reorganization Trust. One year thereafter, Donald Armstrong shall receive a payment of all of the funds remaining in the Reorganization Trust. If, at any time after the entry of the bankruptcy court's order for the re-commencement of payments, Donald Armstrong shall again violate any term of the release, the injunction, or the plan of reorganization, then all payments to Donald Armstrong shall immediately cease, and Donald Armstrong shall forfeit any and all rights to further distribution from the Reorganization Trust or the Armstrong Estate. If there are funds available in the Reorganization Trust after Donald Armstrong has forfeited his rights to further distribution, and after payment of all awards and professional fees to which the the Steppes Parties, Segal, Rushton (or any of those parties' principals, professionals, attorneys, agents, successors-in-interest and assigns) may become entitled, then such remaining funds will be disposed of as ordered by the Bankruptcy Court.

I. H. Proposed Abandonment of Certain Rights.

Pursuant to a sale agreement between Rushton and Donald Armstrong approved by the Court in this case, Rushton has residual rights to collect proceeds from certain litigation sold to Donald Armstrong. The parties hereto agree that Rushton may, at his discretion, abandon those residual rights pursuant to a plan of reorganization that Rushton shall have no further responsibility to monitor those rights on behalf of the Armstrong Estate.

If in the course of foreclosing on the Trusts or otherwise succeeding to the Trusts' interest, Rushton shall gain control over certain malpractice claims asserted by the Trusts against attorneys in the state of Texas (the "Malpractice Claims"), then Rushton may, at his option, pursue, settle, and/or sell the Malpractice Claims as may be permitted by Texas law. Any proceeds received by the Armstrong Estate from the Malpractice Claims shall be added to the Reorganization Trust.

Rushton cannot and shall not abandon or assign any claims or cause of action against the Steppes Parties. Rather, as set forth above, any and all such claims and causes of action shall be released in accordance with this Settlement Agreement and the plan of reorganization.

Rushton shall not abandon or assign any rights or claims which the Armstrong Estate has in any entity (including the Trusts, MPV, Wasatch Growth L.L.C., and Summit Growth, Inc.), whether such rights arise as settlor, trustee, beneficiary, shareholder, member, creditor, judgment creditor, successor-in-interest, assignee, or otherwise, until after any and all claims which such entities may have against the Steppes Parties have been finally and irrevocably released.

All other causes of action in the Armstrong Estate may, at Rushton's discretion, be abandoned to Donald Armstrong in accordance with Bankruptcy Code statutes governing abandonment and setting standards for the same. Such abandonment shall not include any cause of action belonging to the Armstrong Estate and settled before the confirmation date.

I. I. <u>Dismissal of the Nondischargeability Action.</u>

Upon the effective date of a Plan of Reorganization in the Armstrong Case incorporating the terms of this Settlement Agreement, Steppes' complaint for nondischargeability against Donald Armstrong in Adversary Proceeding No. 00-2138 shall be dismissed without prejudice -- so long as Donald Armstrong shall not have violated the release and injunction set forth in this Settlement Agreement and so long as Donald Armstrong shall not bring any claim against Steppes or the Steppes Parties in Adversary Proceeding No. 00-2138. If Donald Armstrong violates the release and injunction, and/or if Donald Armstrong pursues any claim against any of the Steppes' Parties in Adversary Proceeding No. 00-2138, then Steppes may, at Steppes' sole discretion, re-open the Adversary Proceeding if allowed by the Bankruptcy Court.

I. J. Stay of Litigation Pending Confirmation of the Plan.

It is the intent and desire of Steppes and Rushton that Adversary Proceeding No. 00-2138 and Adversary Proceeding No. 01-2159 be stayed pending the court's ruling on the confirmation of the plan of reorganization to be filed in accordance with this Settlement Agreement. It is the intent and desire of Steppes and Rushton that, if the bankruptcy court confirms the plan of reorganization to be filed in accordance with this Settlement Agreement, both Adversary Proceeding No. 00-2138 and Adversary Proceeding No. 01-2159 shall be dismissed. As of the signing of this Settlement Agreement, Adversary Proceeding No. 00-2138 and Adversary Proceeding No. 01-2159 have been stayed by the bankruptcy court, based upon the prior memorandum of settlement entered between Steppes and Rushton. Steppes and Rushton desire that the stay remain in effect until the bankruptcy court rules upon the confirmation of the plan of reorganization to be filed in accordance with

this Settlement Agreement. Accordingly, if necessary, Steppes and Rushton shall file motions with the bankruptcy court presiding over the Armstrong Case seeking to stay all pending litigation between Steppes and Rushton, including but not limited to Adversary Proceeding No. 00-2138 and Adversary Proceeding No. 01-2159 until the bankruptcy court's ruling on confirmation of a plan of reorganization.

I. K. Litigation Pending Approval of Settlement Agreement; Support of Award of Administrative Fees.

Steppes and Rushton recognize that Donald Armstrong has commenced litigation in the bankruptcy court and elsewhere which Steppes and Rushton believe to be in violation of the automatic stay, the bankruptcy court's case management order, and the bankruptcy court's orders staying certain adversary proceedings. Such litigation includes, but is not limited to, Adversary Proceeding No. 01-2226 in the United States Bankruptcy Court for the District of Utah and Case No. 010600131 in the Third District Court of Summit County, Utah. Such litigation is a violation because it purports to assert claims which belong to the Armstrong Estate, because it usurps and interferes with the role of Rushton as Chapter 11 trustee, and because it seeks to litigate claims which are at issue in pending adversary proceedings and which have been stayed by the court. If, and to the extent that Donald Armstrong continues to pursue such litigation, and or initiates other improper litigation during the period while this Settlement Agreement is pending approval, Rushton shall presume that such action violates the case management order or the stay orders and shall take action, as appropriate and after consultation with Steppes, to obtain dismissal of such action. Rushton agrees to support a request for administrative fees by the Steppes Parties for any

professional fees which they may be required to expend to defend against such actions during the period before confirmation of a Plan of Reorganization which effectuates this Settlement Agreement. If such litigation, or any other litigation which is in violation of the injunction, remains pending after the Court's approval of this Settlement Agreement and entry of the injunction proposed herein, Armstrong shall be in violation of the injunction, and all of the remedies in Section I.G., above, shall apply.

I. L. Support of the Plan of Reorganization, Minimization of the Costs of Litigation.

The parties hereto acknowledge that there has been extremely voluminous litigation between Steppes and Donald Armstrong and/or entities owned or controlled by Donald Armstrong. Rushton and Steppes acknowledge that they will cooperate in setting forth this history of litigation in a disclosure statement in the Armstrong Chapter 11 case to support the provisions of this Settlement Agreement.

II. SETTLEMENT WITH MPV

II. A. Withdrawal of Steppes' Claim.

Upon approval of this Settlement Agreement by the Bankruptcy Court and/or upon Confirmation of the Plans of Reorganization contemplated by this Settlement Agreement, Steppes' claim in the MPV Estate shall be deemed withdrawn, and the order approving the Settlement Agreement shall so state.

II. B. Subordination and Payment of Rushton's Claim.

Upon approval of this Settlement Agreement by the

Bankruptcy Courts at the time of the Confirmation of the Plan of Reorganization in the Armstrong Chapter 11 case or at such other time as the Bankruptcy Court approves this Settlement Agreement or relevant provisions herein, Rushton shall subordinate any and all claims of Rushton and/or the Armstrong Estate against the MPV Estate to all other allowed claims including administrative, priority, secured and general unsecured claims. After payment of all other allowed claims against the MPV Estate in cash, including administrative, priority, secured and general unsecured and creditor claims, Rushton will be entitled to a distribution of all remaining assets in the MPV Estate. Accordingly, control over the wrongful lien claim asserted against Steppes in Adversary Proceeding No. 99-2218 pending in the MPV Case, as well as any and all other claims which Segal or the MPV Estate may have against the Steppes Parties shall be vested in Rushton as equity holder of MPV. All other assets of the MPV Estate remaining at the time of the distribution under a Plan of Reorganization in the Chapter 11 case of MPV shall be distributed to Rushton, as a subordinated unsecured creditor of MPV or shall remain with Reorganized MPV and be controlled by Rushton as equity holder of MPV. Segal shall not seek to stay or otherwise stop the Court from ruling on the pending Motions for Summary Judgment in Adversary Proceeding No. 99-2218. The parties shall not pursue further litigation in Adversary Proceeding No. 99-2218 prior to Rushton's gaining control over any and all of MPV's claims against the Steppes Parties. Segal shall not dispose of claims against the Steppes Parties except under the terms of the Settlement Agreement. The Parties hereto believe and execute this Settlement Agreement under the belief that there are sufficient assets in the MPV Estate to allow the wrongful lien litigation as well as any other claims the MPV Estate may have against Steppes or the Steppes Parties to be effectively passed to the control of Kenneth A. Rushton as set forth above; any failure of those claims to so

pass shall be deemed a material mistake which shall vitiate, in whole, this Settlement Agreement and all covenants and undertakings hereunder.

II. C. Injunction Against Future Litigation.

The Plan of Reorganization confirmed in the MPV Case shall also include a permanent injunction enjoining Armstrong from commencing or continuing any litigation against the Steppes Parties, Segal, Rushton or any of those parties' principals, professionals, agents and assigns, (including but not limited to those persons listed in paragraph I.C. of this Stipulation) based upon claims or causes of action released pursuant to the terms of this Settlement Agreement or a Plan of Reorganization which includes the terms of this Settlement Agreement. The Plan of Reorganization shall also contain a permanent injunction barring Armstrong from commencing or continuing causes of action or based upon any action taken by Rushton, Segal, the Steppes Parties, or any of their principals, agents, attorneys, and related parties, in effectuating the settlement and the plan. To assure compliance with the injunction, Segal shall seek a provision in any injunction to be approved as part of a plan of reorganization that Armstrong must apply to the bankruptcy court for authority to commence or continue litigation against the Steppes Parties, Segal, Rushton or any of those parties' principals, professionals, agents and assigns (including but not limited to those persons listed in paragraph I.C. of this Stipulation). If approved by the bankruptcy court, the injunction shall provide that the bankruptcy court will grant authority to Armstrong to commence a suit against a released party only upon a finding that such litigation does not violate the terms of the Plan of Reorganization confirmed in the MPV Case, including the injunction contained in that Plan.

In the event Armstrong violates the permanent injunction set forth in the Plan of Reorganization confirmed in the MPV Case by commencing or continuing litigation against Steppes, Segal, Rushton or any of those parties, principals, professionals, agents and assigns (including but not limited to those persons listed in paragraph I.C. of this Stipulation) without bankruptcy court authority, and Segal receives reliable information to conclude that a violation of the permanent injunction may have occurred, Segal shall take reasonable actions to seek enforcement of the permanent injunction in the bankruptcy court and the cost of such enforcement, including necessary fees incurred by professionals, shall be considered a cost of administration of the Plan of Reorganization payable from funds remaining in the estate upon application to, and allowance by, the bankruptcy court and/or allowable for payment from the Armstrong Estate under paragraph I.G. of this Settlement Agreement.

III. GENERAL TERMS

III. A. Bankruptcy Court Approval.

The terms of this Settlement Agreement which obligate Rushton are conditioned upon and subject to approval of the United States Bankruptcy Court for the District of Utah presiding over the Armstrong Case and the terms of this Settlement Agreement which obligate Segal are subject to and conditioned upon approval of the United States Bankruptcy Court for the District of Utah presiding over the MPV Case. Approval from either bankruptcy court requires such notice and hearing as is mandated under the Bankruptcy Code and Federal Rules of Bankruptcy Procedure. The parties contemplate that the terms of this Stipulation will ultimately be incorporated into Disclosure Statements and Plans of

Reorganization to be proposed in the MPV and Armstrong Cases and such Disclosure Statement and Plans of Reorganizations are subject to approval and/or confirmation by the bankruptcy court presiding over the respective cases. To facilitate confirmation of a Plan of Reorganization in either case, upon Motion executed by all parties to this Settlement Agreement, portions of this Settlement Agreement may be presented to the bankruptcy court presiding over the Armstrong Case and/or MPV Case for approval under Rule 9019 of the Federal Rules of Bankruptcy Procedure.

III. B. Procedure for Consummating Settlement.

This Settlement Agreement contemplates drafting and proposing Disclosure Statements and Plans of Reorganization incorporating the terms of the Settlement in both the MPV and Armstrong Cases and contemplates confirmation of such Plans of Reorganizations. It is understood that the instant Settlement Agreement does not recite all provisions of a Disclosure Statement or Plan of Reorganization but the parties agree that this Settlement Agreement contains the essential terms of their agreement, and all parties are bound, in good faith, to pursue actions necessary to obtain bankruptcy court approval of this Settlement Agreement including confirmation of Plans of Reorganization consistent with and in furtherance of the terms set forth in this Settlement Agreement. To the extent this Settlement Agreement is approved by the Bankruptcy Court, its terms shall be incorporated by Rushton and Segal in any plan and disclosure statement confirmed in those cases. If this Settlement Agreement is not approved by the applicable bankruptcy courts, Segal and Rushton shall have no duty to pursue Plans of Reorganization based upon this Settlement Agreement. This Settlement Agreement may be filed with the court and shall be considered equivalent, in

effect, to reading a settlement into the court's record as the terms under which the parties intend to proceed in an effort to settle claims and disputes that exist between them. The parties will cooperate and work together in good faith to take the actions necessary as soon as is reasonably practicable to consummate the Settlement Agreement. Toward that end, Rushton and Segal shall each file a Disclosure Statement and Plan of Reorganization in the Case for which they serve as Chapter 11 Trustee (Segal in the MPV Case and Rushton in the Armstrong Case) incorporating the terms of this Settlement Agreement no later than September 28, 2001 (or as otherwise extended by the parties by no more than 60 days by written notice) and shall use reasonable diligence thereafter to obtain confirmation of such Plans of Reorganization as soon as practicable thereafter.

III. C. Representation by Counsel.

Each of the parties to this Settlement Agreement have been represented by independent counsel, or determined, voluntarily, not to consult counsel. Each party has voluntarily entered into the Agreement without any duress or coercion from anyone

III. D. Costs and Attorneys Fees.

Rushton and Steppes agree that they shall not apply in the MPV Case for allowance of fees and costs under Section 503(b)(3) of the Bankruptcy Code. Segal and Steppes agree that they shall not apply in the Armstrong Case for allowance of fees and costs under Section 503(b)(3) of the Bankruptcy Code except as otherwise permitted herein.

III. E. Choice of Law.

This Settlement Agreement shall be deemed to be made and

interpreted under, and the rights and liabilities of the parties hereto and shall be determined in accordance with, the laws of the state of Utah and the United States Bankruptcy Code.

III. F Jurisdiction.

Jurisdiction over any dispute arising under this settlement agreement shall lie only with the United States District Court for the District of Utah, Central Division, as referred to the United States Bankruptcy Court for the District of Utah. Nothing in this Settlement Agreement, however, shall constitute a choice-of-law, or choice-of-forum provision with respect to any litigation between Donald Armstrong and the Steppes Parties. None of the Steppes Parties shall be deemed to be subject to personal jurisdiction in Utah by virtue of Steppes' signing the present Settlement Agreement.

III. G. Scope.

This Settlement Agreement shall constitute the entire agreement among them concerning the subject matters covered herein. There are no representations, warranties, agreements, arrangements or undertakings, written or oral, between or among the parties hereto relating to the subject matter of this Settlement Agreement which are not fully expressed and that all parties, with the advice of their respective counsel, have carefully read the entire foregoing Settlement Agreement and know the contents thereof and sign the same of their own free will. This Agreement supersedes any prior written or oral agreements among the parties.

III. H. Successors and Assigns.

This Settlement Agreement shall be binding upon all parties hereto notwithstanding any assignment of any rights.

Furthermore, the Settlement Agreement shall be binding upon, and inure to the benefit of any and all successors and assigns. Except as expressly permitted herein with respect to abandonment and assignment of claims, there shall be no assignment of any rights or remedies to Donald Armstrong or to any entity owned by, controlled by, or related to Donald Armstrong.

III. I. Amendments, Changes and Modifications.

No amendment, change or modification of this Settlement Agreement shall be valid unless in writing, signed by the parties affected thereby or their respective successors and/or assigns.

III. J. Duplicates and Counterparts.

This Agreement may be signed in duplicate originals and/or in counterparts.

III. K Captions and Headings

The captions and headings in this Settlement Agreement are included for the convenience of the parties and the court and have no legal effect and may not be used to contradict or otherwise interpret the language and provisions of this Settlement Agreement.

DATED: Sept. 7, 2001

KENNETH A. RUSHTON,
Chapter 11 Trustee for the
Estate of Donald E. Armstrong

/s/

DATED: Sept. 7, 2001

ROGER G. SEGAL, Chapter 11 Trustee
for
MOUNTAIN PACIFIC VENTURES, INC.
/s/

DATED: Sept. 7, 2001

STEPPES APARTMENTS, LTD.

By: /s/
John L. Feece
President of its general partner,
Baxter Holdings, Inc.

APPENDIX J

Julie A. Bryan (Bar No. 4805)
COHNE, RAPPAPORT & SEGAL, P.C.
525 East 100 South, 5th Floor
P.O. Box 11008
Salt Lake City, Utah 84147-0008
Telephone: (801) 532-2666
Attorney for Roger G. Segal, Chapter 11 Trustee

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH
- CENTRAL DIVISION

FILED IN THE
UNITED STATES
BANKRUPTCY COURT
DISTRICT OF UTAH
2001 NOV 20 P 3:09
WILLIAM C. STILLGEBAUER
CLERK OF COURT
BY: DEPUTY CLERK

In re:
MOUNTAIN PACIFIC VENTURES, INC.,
Debtor.

Bankruptcy No. 99C-22588
(Chapter 11)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 20th day of November, 2001 a true and accurate copy of the foregoing **Disclosure Statement for Trustee's Chapter 11 Plan of Reorganization** and attached **Trustee's Plan of Reorganization Dated November 15, 2001** was mailed, first class, postage fully prepaid, in the United States mail to the following individuals:

Mountain Pacific Ventures, Inc.
c/o Donald F. Armstrong
P.O. Box 1059
Park City, Utah 84060

Penrod Keith
Leboeuf, Lamb, Greene & Macrae
136 S. Main #1000
Salt Lake City, Utah 84101

Greg Adams
MCKAY, BURTON & THURMAN
600 Gateway Tower East
#10 East South Temple Street
Salt Lake City, Utah 84133

Jeff Shields
Callister Nebeker & McCullough
10 E. So. Temple #900
Salt Lake City, Utah 84133

Securities and Exchange Commission
Attn: Sandra W. Lavigna
5760 Wilshire Blvd, 11th Floor
Los Angeles, CA 90036

/s/ Tauni Lee

Julie A. Bryan (Bar No. 4805)
COHNE, RAPPAPORT & SEGAL, P.C. 525 East 100 South, 5th Floor P.O. Box 11008
Salt Lake City, Utah 84147-0008
Telephone: (801) 532-2666
Attorney for Roger G. Segal, Chapter 11 Trustee

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH
- CENTRAL DIVISION

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BANKRUPTCY COURT
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CLERK OF COURT
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In re:
MOUNTAIN PACIFIC VENTURES, INC.,
Debtor.

Bankruptcy No. 99C-22588
(Chapter 11)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 20 day of November, 2001 a true and accurate copy of the foregoing **Disclosure Statement for Trustee's Chapter 11 Plan of Reorganization** and attached **Trustee's Plan of Reorganization Dated November 15, 2001** was mailed, first class, postage fully prepaid, in the United States mail to the following individual:

United States Trustee's Office
Boston Building

9 Exchange Place, Suite 100
Salt Lake City, UT 84101

/s/ Tauni Lee